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**Presentment Date: December 16, 2019**  
**Objection Deadline: December 9, 2019**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re:

Chapter 7

ROCKLAND COUNTRY DAY SCHOOL,

Case No.: 19-23566 (RDD)

Debtor.

-----X

**NOTICE OF PRESENTMENT OF MOTION FOR AN ORDER, PURSUANT TO 11  
U.S.C. § 105(a) AND RULES 2002 AND 9019 OF THE FEDERAL RULES OF  
BANKRUPTCY PROCEDURE, APPROVING STIPULATION OF SETTLEMENT**

**PLEASE TAKE NOTICE** that, on **December 16, 2019**, the annexed motion (“Motion”) of Marianne T. O’Toole (“Trustee”), as Chapter 7 Trustee of the Estate of Rockland Country Day School, seeking entry of an Order (“Proposed Order”) approving a stipulation of settlement between the Trustee and the Town of Clarkstown pursuant to 11 U.S.C. § 105(a) and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure (“Motion”) will be presented for signature to the Honorable Robert D. Drain, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, White Plains, New York 10601.

**PLEASE TAKE FURTHER NOTICE** that objections (if any) to the Motion and/or the Proposed Order must be in writing and be filed, on or before **December 9, 2019** (“Objection Deadline”) as follows: (I) through the Court’s NextGen system, which may be accessed through the internet at the Court’s website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov) and in portable document format (PDF) using Adobe Exchange Software for conversion; or (II) if a party is unavailable to file

electronically, such party shall submit the objection in PDF format on portable media in an envelope with the case name, case number, type and title of document, document number to which the objection refers and the file name on the outside of the envelope to the Clerk of the United States Bankruptcy Court, Southern District of New York, 300 Quarropas Street, White Plains, New York 10601.

**PLEASE TAKE FURTHER NOTICE** that, if objections are received by the Objection Deadline, a hearing will be scheduled, notice of which will be separately provided.

**PLEASE TAKE FURTHER NOTICE** that, unless objections are received by the Objection Deadline, the Court may enter the Proposed Order.

Dated: November 22, 2019  
Wantagh, New York

**LaMONICA HERBST & MANISCALCO, LLP**  
Counsel to Marianne T. O'Toole, as Trustee

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:

Chapter 7

ROCKLAND COUNTRY DAY SCHOOL,

Case No.: 19-23566 (RDD)

Debtor.

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**MOTION FOR AN ORDER, PURSUANT TO 11 U.S.C. § 105(a) AND RULES 2002 AND  
9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE, APPROVING  
STIPULATION OF SETTLEMENT**

TO THE HONORABLE ROBERT D. DRAIN,  
UNITED STATES BANKRUPTCY JUDGE:

Marianne T. O'Toole ("Trustee"), as Chapter 7 Trustee of the Estate of Rockland Country Day School ("Debtor") seeks entry of an Order approving a stipulation of settlement ("Stipulation") between the Trustee and the Town of Clarkstown ("Town") pursuant to 11 U.S.C. § 105(a) ("Bankruptcy Code") and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") and, in support thereof, respectfully states as follows:

**JURISDICTION**

1. The Court has jurisdiction to consider and determine this Motion pursuant to 28 U.S.C. §§ 157 and 1334.
2. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(A) and (L).
3. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
4. The statutory predicates for the relief sought in this Motion include sections 105 and 9019(a) of the Bankruptcy Code and Bankruptcy Rule 2002(a)(3).

## **BACKGROUND**

5. On August 31, 2019 (“Petition Date”), the Debtor filed a voluntary petition for relief pursuant to Chapter 7 of the Bankruptcy Code in this Court.

6. Marianne T. O’Toole was appointed as the Chapter 7 Trustee of the Debtor’s estate and, by operation of law, Marianne T. O’Toole is the permanent Chapter 7 Trustee of the Debtor’s estate.

7. As reflected on the Debtor’s Schedule G, as of the Petition Date, the Debtor was party to a lease agreement (“Lease”) with the Town for the premises located at 32-34 Kings Highway, Congers, New York 10920 (“Premises”). The term of the Lease was originally July 1, 2018 through June 30, 2019. The Lease was purportedly extended for a period of July 1, 2019 to June 30, 2024 pursuant to a Lease Modification and Extension Agreement, which extension the Town asserts is invalid. As of the Petition Date, the Town was holding a deposit under the Lease in the amount of \$18,000 (“Deposit”).

8. The Town has asserted that, as of November 1, 2019, it is owed pre-petition rent and other charges in the amount of \$10,416.57, plus additional rent and other charges (“Pre-Petition Arrears”). The Town has also asserted that, as of November 1, 2019, it is owed post-petition rent and other charges in the amount of \$31,250.01, plus additional rent and other charges (“Post-Petition Arrears”).

9. The Town is listed as a creditor on the Debtor’s Schedule E/F in an undetermined amount. The Town was also listed on the Debtor’s Statement of Financial Affairs as having received \$10,416.67 within ninety days of the Petition Date (“Pre-Petition Transfers”).

10. The Trustee and the Town (together, “Parties”) without admitting liability of any kind, have agreed to resolve any and all disputes, claims and liabilities of any kind with respect

to the Premises, the Lease, the Deposit, the Pre-Petition Arrears, the Post-Petition Arrears and the Pre-Petition Transfers on the terms and subject to the conditions set forth in the Stipulation annexed as Exhibit A.

### **RELIEF REQUESTED AND BASIS FOR RELIEF**

11. By this Motion, the Trustee seeks approval of the Stipulation as being fair, equitable and in the best interests of the Debtor's estate in accordance with section 105(a) of the Bankruptcy Code and Bankruptcy Rules 2002(a)(3) and 9019(a). For the reasons set forth more fully below, the Trustee believes that the settlement falls well above the lowest level of reasonableness and urges the Court to approve the Stipulation. A proposed Order is annexed as Exhibit B ("Proposed Order").

#### **I. The Terms of the Settlement**

12. The Stipulation provides that, upon execution, the Town shall pay the sum of thirty-five thousand dollars (\$35,000) ("Settlement Sum") to the Trustee. See Exhibit A at p. 2, ¶ 1. The Settlement Sum was paid to the Trustee by the Town.

13. The Stipulation provides that, upon the Order approving the Stipulation becoming final and non-appealable, the following will occur: (a) the Lease shall be deemed rejected; (b) the Premises and its contents shall be deemed surrendered and abandoned to the Town; (c) the Town shall be authorized to retain the Deposit; (d) any and all claims of the Town against the Debtor, the Debtor's estate, the Trustee or her professionals relating to Lease and/or the Premises, including claims for the Pre-Petition Arrears and Post-Petition Arrears, shall be deemed waived, satisfied, released and/or forever discharged; and (e) any and all claims of the Trustee and the Debtor's estate against the Town relating to Lease, the Premises and/or the Pre-Petition Transfers

shall be deemed waived, satisfied, released and/or forever discharged. See Exhibit A at pp. 2-3, ¶ 2.

14. The above is intended to be only a summary of the more salient terms of the Stipulation. The Trustee respectfully refers the Court and all parties to the Stipulation that is Exhibit A for its complete terms and conditions.

## **II. The Stipulation Should Be Approved**

15. Settlements and compromises are favored in bankruptcy as they minimize costly litigation and further parties' interests in expediting the administration of the bankruptcy estate. In re Dewey & LeBoef LLP, 478 B.R. 627, 640 (Bankr. S.D.N.Y. 2012).

16. Under Bankruptcy Rule 9019, bankruptcy courts have the authority to “approve a compromise or settlement.” FED. R. BANKR. P. 9019(a). The court must determine that a settlement under Bankruptcy Rule 9019 is fair, equitable, and in the best interests of the estate before it may approve a settlement. In re Drexel Burnham Lambert Grp., Inc., 134 B.R. 493, 496 (Bankr. S.D.N.Y. 1991) (citing Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968)). See also Topwater Exclusive Fund III, LLC v. SageCrest II, LLC (In re SageCrest II), Nos. 3:10cv978 (SRU), 3:10cv979 (SRU), 2011 WL 134893, at \*8-9 (D. Conn. Jan. 14, 2011); Cousins v. Pereira (In re Cousins), No. 09 Civ. 1190(RJS), 2010 WL 5298172, at \*3 (S.D.N.Y. Dec. 22, 2010); In re Chemtura Corp., 439 B.R. 561, 593–94 (Bankr. S.D.N.Y. 2010); In re Lehman Bros. Holdings, 435 B.R. 122, 134 (S.D.N.Y. 2010).

17. The court’s responsibility is to “canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness.” Chemtura, 439 B.R. at 594 (quoting In re W.T. Grant, Co., 699 F.2d 599, 608 (2d Cir. 1983)) (internal quotations omitted). However,

the court is not required to go so far as to conduct a trial on the terms to approve a settlement. Id. Rather, the court may rely upon the opinions of the trustee, the parties and their attorneys to evaluate the settlement and to make an independent judgment. See In re Adelphia Communs. Corp., 368 B.R. 140, 225-226 (Bankr. S.D.N.Y. 2007)

18. The court must inform itself of “all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated.” O’Connell v. Packles (In re Hilsen), 404 B.R. 58, 70 (Bankr. E.D.N.Y. 2009) (quoting TMT Trailer Ferry, 390 U.S. at 424) (internal quotations omitted). The Second Circuit outlined the test for consideration of settlements under the Bankruptcy Rules in Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC), 478 F.3d 452, 462 (2d Cir. 2007). The factors to be considered are interrelated and require the court to evaluate:

(1) the balance between the litigation’s possibility of success and the settlement’s future benefits; (2) the likelihood of complex and protracted litigation, “with its attendant expense, inconvenience, and delay,” including the difficulty in collecting on the judgment; (3) “the paramount interests of the creditors,” including each affected class’s relative benefits “and the degree to which creditors either do not object to or affirmatively support the proposed settlement;” (4) whether other parties in interest support the settlement; (5) “competency and experience of counsel” supporting, and “[t]he experience and knowledge of the bankruptcy court judge” reviewing, the settlement; (6) “the nature and breadth of releases to be obtained by officers and directors;” and (7) “the extent to which the settlement is the product of arm’s length bargaining.”

Id. (internal citations omitted). The burden is on the settlement proponent to persuade the court that the settlement is in the best interests of the estate. See 8 NORTON BANKRUPTCY LAW AND PRACTICE 3D § 167:2 (3d ed. 2011).

19. Here, the Trustee determined in his reasonable business judgment that the proposed settlement embodied in the Stipulation is fair and reasonable within the standards discussed above, and that the settlement is in the best interests of the Debtor’s estate. Among other things, the Trustee considered that the Debtor is no longer operating and does not require

the Premises in this Chapter 7 case. The Stipulation provides for the surrender of the Premises and, importantly, a cash payment and the waiver of both the Pre-Petition Arrears and the Post-Petition Arrears. While the Trustee asserted that the Debtor's estate may hold claims against the Town relating to the Pre-Petition Transfers, the Stipulation resolves all disputes between the Parties concerning the Premises, the Lease, the Deposit, the Pre-Petition Arrears, the Post-Petition Arrears and the Pre-Petition Transfers without litigation, which could be protracted and costly. Finally, the Trustee determined that the releases contained in the Stipulation, which are mutual between the Parties, were reasonable and appropriate under the circumstances.

20. The settlement embodied in the Stipulation was the result of arm's-length negotiations between the Trustee and the Town through their respective counsel.

21. For these reasons, the Trustee submits that the Stipulation is fair, reasonable and in the best interests of the Debtor's estate and the Trustee recommends its approval.

#### **NOTICE AND NO PRIOR REQUEST**

22. In accordance with Bankruptcy Rule 2002 and Bankruptcy Rule 9006(f), the Trustee will serve a copy of this Motion and the Stipulation by regular mail upon: (a) the Debtor, through counsel; (b) the Town and its counsel; (c) the United States Trustee; (d) any party in interest that has served a request for special notice or a notice of appearance pursuant to Bankruptcy Rule 2002; (e) applicable taxing authorities and governmental units; and (f) all known creditors of the Debtor.

23. No previous application for the relief requested herein has been made to this or any other Court.



**WHEREFORE**, the Trustee respectfully requests that the Court enter the Proposed Order approving the Stipulation, and grant the Trustee such other and further relief as may be just and appropriate.

Dated: November 22, 2019  
Wantagh, New York

**LaMONICA HERBST & MANISCALCO, LLP**  
Counsel to Marianne T. O'Toole, as Chapter 7 Trustee

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re:

Chapter 7

ROCKLAND COUNTRY DAY SCHOOL,

Case No.: 19-23566 (RDD)

Debtor.  
-----X

**STIPULATION OF SETTLEMENT**

WHEREAS, on August 31, 2019 ("Petition Date"), Rockland Country Day School ("Debtor") filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the United States Code ("Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court");

WHEREAS, Marianne T. O'Toole was appointed as the Chapter 7 Trustee of the Debtor's estate and, by operation of law, Marianne T. O'Toole is the permanent Chapter 7 Trustee of the Debtor's estate ("Trustee");

WHEREAS, as reflected on the Debtor's Schedule G, as of the Petition Date, the Debtor was party to a lease agreement ("Lease") with the Town of Clarkstown ("Town");

WHEREAS, the Lease is for the premises located at 32-34 Kings Highway, Congers, New York 10920 ("Premises");

WHEREAS, the term of the Lease was originally July 1, 2018 through June 30, 2019;

WHEREAS, the Lease was purportedly extended for a period of July 1, 2019 to June 30, 2024 pursuant to a Lease Modification and Extension Agreement, which extension the Town asserts is invalid;

WHEREAS, the Town is listed as a creditor on the Debtor's Schedule E/F in an undertermined amount;

WHEREAS the Town was listed on the Debtor's Statement of Financial Affairs as having received \$10,416.67 within ninety days of the Petition Date ("Pre-Petition Transfers");

WHEREAS, as of the Petition Date, the Town was holding a deposit under the Lease in the amount of \$18,000 ("Deposit");

WHEREAS, the Town has asserted that, as of November 1, 2019, it is owed pre-petition rent in the amount of \$10,416.57, plus additional rent and other charges ("Pre-Petition Arrears");

WHEREAS, the Town has asserted that, as of November 1, 2019, it is owed post-petition rent in the amount of \$31,250.01, plus additional rent and other charges ("Post-Petition Arrears"); and

WHEREAS, the Trustee and the Town (together, "Parties"), without admitting liability of any kind, have agreed to resolve all disputes with respect to the Lease, the Deposit, the Pre-Petition Transfers, the Premises, the Pre-Petition Arrears and the Post-Petition Arrears on the terms and subject to the conditions set forth in this stipulation ("Stipulation").

NOW THEREFORE, for good and valuable consideration, it is hereby stipulated to, consented to and agreed by and between the Parties as follows:

1. Upon the execution of this Stipulation by all parties hereto, the Town shall pay the sum of thirty-five thousand dollars (\$35,000) ("Settlement Sum") to the Trustee in exchange for the rejection of the Lease, the surrender of the Premises to the Town and the mutual releases contained herein.

2. Upon the Order approving this Stipulation becoming final and non-appealable: (a) the Lease shall be deemed rejected; (b) the Premises and its contents shall be deemed surrendered and abandoned to the Town; (c) the Town shall be authorized to retain the Deposit; (d) any and all claims of the Town against the Debtor, the Debtor's estate, the Trustee or her

professionals relating to the Lease and/or the Premises, including claims for the Pre-Petition Arrears and Post-Petition Arrears, shall be deemed waived, satisfied, released and/or forever discharged; and (e) any and all claims of the Trustee and the Debtor's estate against the Town relating to the Lease, the Premises and/or the Pre-Petition Transfers shall be deemed waived, satisfied, released and/or forever discharged.

3. This Stipulation is expressly conditioned upon the entry of a final, non-appealable Order of the Bankruptcy Court authorizing and approving this Stipulation. Upon execution of this Stipulation and payment of the Settlement Sum, the Trustee shall seek the entry of an Order of the Bankruptcy Court approving this Stipulation.

4. This Stipulation is a compromise and settlement of disputed claims and is the product of arm's-length negotiations.

5. The Parties understand and agree that the execution and delivery of this Stipulation shall not constitute or be construed as an admission or adjudication, express or implied, of any liability whatsoever with respect to any claims that are the subject matter of this Stipulation, or any issue of fact, law, or liability of any type or nature with respect to any matter whether or not referred to herein, and none of the Parties hereto has made such an admission.

6. This Stipulation may not be amended or modified other than in writing executed by counsel to each of the Parties.

7. This Stipulation sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements and understandings, written or oral, between the Parties pertaining to the subject matter hereof.

8. This Stipulation shall be binding upon the Parties, their respective heirs, distributees, executors, successors, administrators and assigns.

9. This Stipulation shall be construed in accordance with the laws of the State of New York without regard to the principles of choice of law.

10. This Stipulation may be executed in one or more counterparts, including by facsimile and/or electronic mail in portable document format (.pdf), each of which shall be deemed an original, but all of which together constitute one and the same instrument.

11. Each person signing this Stipulation represents and warrants that he or she has been duly authorized and has the requisite authority to execute and deliver this Stipulation on behalf of such party and to bind the respective party to the terms and conditions of the Stipulation, but the Trustee's authority to bind the Debtor's estate is subject to approval by the Bankruptcy Court.

12. In the event the Bankruptcy Court declines to approve the Stipulation, the Stipulation shall become null, void, and of no further force or effect, the Settlement Sum shall be returned to the Town and nothing contained herein shall be deemed an admission by any of the Parties.

13. Neither this Stipulation nor any of the communications leading or relating to its negotiation or execution shall be admissible in any court, administrative or other legal proceeding, except with respect to an action to enforce the terms of the Stipulation.

[Signature Page Follows]

Dated: November 18, 2019  
Wantagh, New York




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Telephone: (516) 826-6500

Dated: November 12, 2019  
Clarkstown, New York

TOWN OF CLARKSTOWN



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Frank Borelli  
Deputy Supervisor, Town of Clarkstown

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re:

Chapter 7

ROCKLAND COUNTRY DAY SCHOOL,

Case No.: 19-23566 (RDD)

Debtor.  
-----X

**ORDER APPROVING STIPULATION OF SETTLEMENT**

Upon the notice of presentment of motion and motion (“Motion”) of Marianne T. O’Toole, the Chapter 7 Trustee (“Trustee”) of the estate of Rockland Country Day School (“Debtor”), seeking entry of an Order, pursuant to 11 U.S.C. § 105(a) and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure, authorizing and approving the stipulation of settlement (“Stipulation”) between the Trustee and the Town of Clarkstown; and upon the Affidavit of Service of the Motion; and there being due and sufficient notice of the Motion and opportunity for a hearing thereon; and there being no opposition to the relief sought in the Motion; and no additional notice of hearing being required; and the Court having determined that the Stipulation is a fair and reasonable settlement of the dispute at issue, a proper exercise of the Trustee’s judgment in light of the risks and costs of litigation, and in the best interests of the Debtor’s estate; now, therefore, it is hereby

ORDERED that the Stipulation annexed as Exhibit A is hereby approved; and, it is further

ORDERED that Trustee is authorized and empowered to do such things, expend such funds and do such things as may be reasonably necessary to effectuate the terms of this Order and the Stipulation.

Dated: December \_\_\_, 2019  
White Plains, New York

\_\_\_\_\_  
Hon. Robert D. Drain  
United States Bankruptcy Judge

# **EXHIBIT A**

(Stipulation of Settlement to be annexed)